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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JEREMIAH E. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.B.,

Defendant and Appellant.

D057486

(Super. Ct. No. NJ13887B/C)

APPEAL from findings and orders of the Superior Court of San Diego County,
Michael Imhoff, Commissioner. Affirmed.

K.B. appeals findings and orders terminating her parental rights under Welfare and Institutions Code¹ section 366.26. She also appeals an order denying her motion for a continuance of the section 366.26 hearing, under section 352. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

K.B. is the mother of twins Jeremiah E. and Josiah E. (together, the children). The identity of Jeremiah's and Josiah's father is unknown. The children have an older brother, E.E., who is not a subject of this appeal.

In 2008 one-year-old E.E. was made a dependent of the court as a result of K.B.'s history of methamphetamine and alcohol abuse. K.B. did not participate in reunification services in E.E.'s case. Services were terminated at the six-month hearing, which was pending at the time of the twins' birth in January 2009. K.B.'s parental rights to E.E. were subsequently terminated.

Jeremiah and Josiah were born five weeks early. Within a few weeks of their birth, they were diagnosed with mild failure to thrive. K.B. admitted that she was using methamphetamine and alcohol at the time. The San Diego County Health and Human Services Agency (the Agency) detained the children in protective custody, and they were subsequently adjudicated dependents of the juvenile court. The court ordered a plan of reunification services for K.B., which included counseling, parenting education, substance abuse treatment and community assistance services.

¹ Further statutory references are to the Welfare and Institutions Code.

K.B. visited Jeremiah and Josiah only once during the reunification period. She did not comply with any aspect of her court-ordered case plan. At the six-month status review hearing, the court terminated her reunification services and set a section 366.26 hearing for March 18, 2010.

The Agency reported that Jeremiah and Josiah were healthy, adorable 14-month-old twins, who were meeting their developmental milestones. The children had been in a potential adoptive home for seven months and were strongly attached to their caregiver.

K.B. did not appear at the section 366.26 hearing on March 18, 2010. At her request, through her counsel, the court set a contested section 366.26 hearing for April 22. On April 22, K.B.'s attorney informed the court that K.B. was unable to attend the hearing because of transportation problems, and asked the court to continue the hearing for a week. K.B. relied on her mother (the children's grandmother) for transportation but the grandmother had injured her foot and was unable to drive. According to K.B.'s attorney, K.B. did not feel comfortable taking public transportation to court.

The court denied the motion, finding that there were alternative means of transportation available to K.B., and that she had adequate time before the hearing date to make arrangements for transportation to court. The court admitted the Agency's section 366.26 report in evidence. K.B. did not present any affirmative evidence. Her attorney argued that K.B. wanted to maintain a parental relationship with Jeremiah and Josiah, and that there was a family relationship between the children and their maternal grandmother.

The trial court found by clear and convincing evidence that Jeremiah and Josiah were adoptable. The trial court determined that K.B. had not maintained regular or consistent visitation with the children, and terminated her parental rights.

DISCUSSION

K.B. contends that the trial court abused its discretion by denying her request to continue the section 366.26 hearing until she could arrange appropriate transportation to court. She further contends that she was denied her constitutional right to due process when the trial court terminated her parental rights in her absence.

A

The court did not abuse its discretion when it denied the motion for a continuance.

Section 352 provides that at the request of counsel for the parent, guardian, minor or agency, the court may continue any dependency hearing beyond its usual time limits on a showing of good cause, provided that no continuance shall be granted that is contrary to the child's interests. In considering the child's interests, the court is directed to give substantial weight to the child's need for a prompt resolution of his or her custody status and the need to provide a child with a stable home. The continuance may not be for a longer period of time than shown to be necessary by the evidence presented at the hearing on the motion for the continuance. (§ 352.)

We review the denial of a motion for a continuance for an abuse of discretion. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585; see, *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1298 [the legal principles that govern the subject of discretionary action vary with context].)

The court did not abuse its discretion when it determined that K.B. did not show good cause for a continuance of the children's section 366.26 permanent plan selection hearing. K.B. telephoned her attorney on the day before the section 366.26 hearing to advise her attorney that the grandmother was not able to drive K.B. to court to attend the section 366.26 hearing. It is thus clear that K.B. was not presented with a last minute transportation problem or an emergency that prevented her from attending the hearing at which her parental rights to her children were at stake, and there is no evidence that she could not have made other transportation arrangements.

The only hearings that K.B. attended throughout the children's dependency proceedings were the hearings that were held in connection with the six-month status review. K.B. did not attend the detention, jurisdiction or disposition hearings, despite court orders directing her to appear. She also failed to attend other hearings related to paternity, relative placement and visitation. On this record, the court could reasonably determine that granting K.B.'s attorney's request for a continuance would not guarantee K.B.'s appearance at the section 366.26 hearing.

The section 366.26 hearing was held more than a year after the children were made dependents of the court. At this stage of the proceedings, the children's interests favored permanency, which is an important consideration under section 352, and constrains the court's discretion to grant a continuance. (See, generally, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re A.M.* (2008) 164 Cal.App.4th 914, 925.) Continuances of section 366.26 hearings are discouraged, and an oral motion for a continuance on the day of the section 366.26 hearing is disfavored. (*In re Ninfa S.* (1998)

62 Cal.App.4th 808, 810-811.) We conclude that the trial court reasonably exercised its discretion when it denied the motion for a continuance. (§ 352.)

B

K.B. was afforded her due process rights to notice and an opportunity to be heard.

State intervention to terminate the relationship between a parent and child must be accomplished by procedures that meet the requisites of the due process clause of the Fourteenth Amendment to the United States Constitution. (*Santosky v. Kramer* (1982) 455 U.S. 745, 752-753, citing *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 37.) Persons faced with the involuntary termination of their parental rights have a critical need for procedural protections. (*Santosky, supra*, at p. 753.)

Due process "requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418, quoting *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) In addition, a parent in a dependency proceeding has a due process right to assert the privilege against self-incrimination, to confront and cross-examine witnesses, to use the process of the court to bring in witnesses and to present evidence. (*In re Malinda S.* (1990) 51 Cal.3d 368, 383; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 444; Cal. Rules of Court, rule 5.534(k).)

As in other civil proceedings, it is not essential that a party in a dependency proceeding personally appear. Due process is satisfied when an absent parent receives meaningful access to the court through appointed counsel, and is not denied the

opportunity to present evidence in some form and to cross-examine the witnesses. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 601-602; *In re Dolly D.*, *supra*, 41 Cal.App.4th at p. 445, citing *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1008.) In California, an indigent parent is entitled to appointed counsel. (§ 317, subd. (b).)

The record shows that K.B. received due process. (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 601-602; *In re Malinda S.*, 51 Cal.3d at p. 383; *Dolly D.*, *supra*, 41 Cal.App.4th at p. 445.) K.B. received notice of the section 366.26 hearing and was represented by appointed counsel at the hearing, as she had been throughout the children's dependency proceedings. Significantly, K.B. does not proffer any evidence on appeal to show that she was denied the right to call witnesses, to testify on her own behalf, to cross-examine the social worker, or to present other evidence. She has not shown that her absence at the section 366.26 hearings prevented her attorney from presenting evidence or calling witnesses on her behalf, or cross-examining the social worker or other witnesses.

Further, the record shows that the children were happy and healthy, that they were flourishing in the care of a potential adoptive parent, and that none of the exceptions to termination of parental rights set forth in section 366.26, subdivision (c) applies. K.B. had visited Jeremiah and Josiah only once during the reunification period. (§ 366.26, subd. (c)(1)(B)(i).) The children were not in the care of a relative who was unable or unwilling to adopt them. (§ 366.26, subd. (c)(1)(A).) They did not have a relationship with their older brother, who was in another adoptive home. (§ 366.26, subd. (c)(1)(B)(v).) The children were not Indian children, over age 12, or in residential

treatment. (§ 366.26, subd. (c)(1)(B)(ii), (iii), (iv), (vi).) K.B.'s testimony would not have altered the findings that Jeremiah and Josiah were likely to be adopted within a reasonable time or the determination that termination of parental rights would not be detrimental to the children under section 366.26, subdivision (c)(1). Thus, even if there were constitutional error in proceeding with the hearing in K.B.'s absence, such error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; see, Cal. Const., art. VI, § 13.)

DISPOSITION

The findings and orders are affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

McDONALD, J.